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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 518

GUY T. HELVERING,
COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

SABINE TRANSPORTATION COMPANY, INC.,
Respondent

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

Opinion Below

The memorandum opinion of the Board of Tax Appeals (R. 19-22) is unreported. The opinion of the Circuit Court of Appeals is reported at 128 Federal (2d) 845, and the text will be found in the Appendix at page 17.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on June 30, 1942. A petition for rehearing was filed by the Commissioner of Internal Revenue on July 18, 1942, and such petition was denied August 13, 1942. The jurisdiction of this Court has been invoked under Section 240(a) of the JUDICIAL CODE as amended by the Act of February 13, 1925.

Question Presented

Where a taxpayer declared and paid a dividend in its own notes during the year 1937 and was allowed a "dividends paid credit" in 1937 for the dividend so declared and paid, is not the taxpayer upon payment of such notes in 1938, by the plain mandate of Section 27(a)(4) of the 1938 Act, entitled to include in its "dividends paid credit" for 1938 such payments as "amounts used * * * to pay or retire indebtedness of any kind * * * ?"

Statutes and Regulations Involved

The statutes and regulations involved will be found in the argument and Appendix, infra, pages 25-30.

Statement

The facts as stipulated (R. 10-19) were adopted by the Board of Tax Appeals as its findings (R. 19). The facts relevant to this proceeding are summarized as follows:

During the year 1937 respondent, acting under proper authority of its Board of Directors, declared and paid a dividend amounting to $530,000.00 in its own notes. For undistributed profits tax purposes, in its return for the year 1937, respondent claimed and was allowed a "dividends paid credit," by reason of such dividend paid, amounting to $530,000.00 (R. 19-21). In 1938 taxpayer paid its note indebtedness in the

amount of $530,000.00 which was issued by it in 1937 in payment of the dividend. In its return for the year 1938 respondent claimed a "dividends paid credit" under Section 27 (a) (4) of the REVENUE ACT OF 1938 for the notes so paid by it in 1938. The Commissioner disallowed the credit claimed for 1938 and was sustained by the Board of Tax Appeals (R. 21-22). The respondent appealed and the Circuit Court of Appeals for the Fifth Circuit reversed (R. 36).

Summary of Argument

The Revenue Act of 1938 levied a tentative tax of 19 per cent on corporate net income against which was allowed a credit equal to 2½ per cent of the "dividends paid credit" defined by Section 27.

"Dividends paid credit" is a technical term, specifically and definitely defined. One of its components is "amounts used or irrevocably set aside to pay or to retire indebtedness of any kind" (Subsection (a) (4)). The term "indebtedness" is also specifically and definitely defined in the statute.

Respondent in 1938 paid $530,000.00 to retire certain notes which respondent issued in 1937 to its stockholders in payment of a dividend declared in 1937. Respondent claims that the payment made to retire the notes must be included in computing its "dividends paid credit" for 1938 under Section 27 because the $530,000.00 was an amount used to pay indebtedness *of any kind.*

The Commissioner contends that the statute should be so construed as to exclude payments of indebtedness from the "dividends paid credit" where a credit was received for the indebtedness in the year the indebtedness was created.

Section 27 (a) (4), on which respondent relies, defines the word "indebtedness" in definite and specific terms. The statutory definition can not lawfully be restricted or limited by administrative regulation.

The language of Section 27.(a) (4) is clear and unambiguous. Anyone can understand it. There is, therefore, no occasion to resort to rules of construction to aid in determining the meaning of the statute.

Subsection (e) of Section 27 does not limit or control over Subsection (a) (4) of said section. These two subsections are entirely unrelated to, and independent of, each other.

Subsection (a) (4) contains its own limitations. No other limitation or limitations may be impinged upon it by administrative regulation. When Congress enacted Subsection (a) (4) it knew that many dividend obligations were outstanding. Had it meant for payments made in retirement of such obligations to be excluded from the debt credit provision of (a) (4) it would have said so.

The legislative history of Subsection (a) (4) shows that it was intended to apply to indebtedness of every kind and character. The words "of any kind" were inserted after "indebtedness" in the original language for clarification after there had been a controversy over the meaning of "indebtedness."

This Court in HELVERING v. CREDIT ALLIANCE CORPORATION, infra, rejected the same reasoning that the Commissioner would have applied here. The Court held that a departmental regulation which contravened the plain language of a statute was legislative in character and hence void. The Regulation which the Commissioner relies on here contravenes the plain terms of Subsection (a) (4) and it is likewise legislative in character and without force or effect.

Argument

This case arises under the Revenue Act of 1938 but has relation to the Revenue Act of 1936. The Revenue Act of 1936 for the first time imposed a surtax on the undistributed profits of corporations. The tax ranged from 7 to 27 per cent

of the "undistributed net income." A "dividends paid credit" was allowed against the "adjusted net income." Provision was made for the payment of dividends in corporate obligations. The objective of the tax was to force corporations to distribute their earnings to the end that their stockholders would pay an income tax on the distributions. If a corporation distributed all of its "adjusted net income" it avoided entirely the tax on "undistributed profits."

The undistributed profits tax met with much opposition and it was not continued in the Revenue Act of 1938. By the latter Act a tentative tax of 19 per cent was imposed and provision was made for a credit against the *tax* equal to 2½ per cent of the "dividends paid credit" but not in excess of 2½ per cent of the "adjusted net income." The "dividends paid credit" was broadened and continued in the 1938 Act because Congress evidently considered it advisable to continue to encourage corporations to distribute their earnings.

The provisions of the 1938 Act pertinent to this case are:

SEC. 13. TAX ON CORPORATIONS IN GENERAL.

(c) General Rule.—The tax computed under this subsection shall be as follows:

(1) A tentative tax shall first be computed equal to 19 per centum of the adjusted net income.

(2) The tax shall be the tentative tax reduced by the sum of—

(A) 16½ per centum of the credit for dividends received provided in Section 26(b); and

(B) 2½ per centum of the dividends paid credit provided in Section 27, but not to exceed 2½ per centum of the adjusted net income.

SEC. 27. CORPORATION DIVIDENDS PAID CREDIT.

(a) Definition in General.—As used in this title with respect to any taxable year the term "dividends paid credit" means the sum of:

(1) The basic surtax credit for such year, computed as provided in Subsection (b);

(2) The dividend carry-over to such year, computed as provided in Subsection (c);

(3) The amount, if any, by which any deficit in the accumulated earnings and profits, as of the close of the preceding taxable year (whether beginning on, before, or after January 1, 1938), exceeds the amount of the credit provided in Section 26(c) (relating to net operating losses), for such preceding taxable year (if beginning after December 31, 1937); and

(4) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness. As used in this paragraph the term "indebtedness" means only an indebtedness of the corporation existing at the close of business on December 31, 1937, and evidenced by a bond, note, debenture, certificate of indebtedness, mortgage, or deed of trust, issued by the corporation and in existence at the close of business on December 31, 1937, or by a bill of exchange accepted by the corporation prior to, and in existence at, the close of business on such date. Where the indebtedness is for a principal sum, with interest, no credit shall be allowed under this paragraph for amounts used or set aside to pay such interest.

(b) Basic Surtax Credit.—As used in this title the term "basic surtax credit" means the sum of:

(1) The dividends paid during the taxable year, increased by the consent dividends credit provided in Section 28, and reduced by the amount of the credit provided in Section 26(a), relating to interest on certain obligations of the United States and Government corporations;

* * *

(e) Dividends in Obligations of the Corporation.—If a dividend is paid in obligations of the corporation, the amount with respect thereto which shall be used in computing the basic surtax credit shall be the face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. If the fair market value of any such dividend paid in any taxable year of the corporation beginning after December 31, 1935, is lower than the face value, then when the obligation is redeemed by the corporation in a taxable year of the corporation beginning after December 31, 1937, the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall be treated as a dividend paid in the taxable year in which the redemption occurs.

It will be noted that "dividends paid credit" is a technical term and does not necessarily have any relation to dividends. The term includes in addition to dividends paid in cash or obligations, amounts set aside or paid to retire indebtedness of any kind, net operating losses carried over from the previous year, certain deficits in accumulated earnings and other items not related to dividends at all, and must be distinguished from the much narrower term "basic surtax credit."

The respondent in the year 1937 paid a dividend of $530,000.00 in its own notes and respondent's stockholders reported such dividend in their respective income tax returns and paid the required tax thereon. This accomplished the objective of the surtax on undistributed profits imposed by the Revenue Act of 1936. Respondent claimed in its 1937 return and the Commissioner allowed a "dividends paid credit" equal to the face amount of the notes in computing respondent's liability for the undistributed profits tax imposed by the Revenue Act of 1936. Respondent paid the aforesaid notes in full in 1938 and included the $530,000.00 payment in its

"dividends paid credit" for the year 1938 under authority of Subsection (a) (4) of Section 27 of the REVENUE ACT OF 1938. The credit thus claimed for the year 1938 was disallowed by the Commissioner under the purported authority of Article 27 (a)-3 of TREASURY REGULATION 101. (App. page 30). The Board of Tax Appeals upheld the Regulation on authority of its previous decision in the case of SPOKANE DRY GOODS COMPANY v. COMMISSIONER, 43 B.T.A. 793, which was subsequently affirmed by the Circuit Court of Appeals for the Ninth Circuit, 125 Fed. (2d) 865. The Circuit Court of Appeals for the Fifth Circuit reversed the Board in respondent's case and approved respondent's contention that Subsection (a) (4) is so plain and unambiguous as not to permit or require resort to the aid of rules of construction to interpret it. The Fifth Circuit Court thought that any question as to the correctness of respondent's contention was put at rest by the decision of the Supreme Court of the United States in HELVERING v. CREDIT ALLIANCE CORPORATION, 316 U.S. 107, 62 S. Ct. 989. The SPOKANE DRY GOODS COMPANY case was decided by the Ninth Circuit prior to the time this Court decided HELVERING v. CREDIT ALLIANCE CORPORATION.

The Commissioner makes much the same contention here as he did in HELVERING v. CREDIT ALLIANCE CORPORATION, supra. In that case he argued that Subsection (h) of Section 27 of the REVENUE ACT OF 1936 should be read as an exception to, or limitation on, Subsection (f) (App. page 29). In this case the Commissioner contends that Subsection (e) of Section 27 should be read as an exception to, or limitation on, Subsection (a) (4) and argues that the Treasury Regulation on which he relies is supported by four canons of statutory construction, namely that specific provisions of a statute control over general provisions, a harmonious statutory scheme should be sought and absurd results avoided,

double deductions are not permissible,[1] and credit provisions should be strictly construed.

We reply to the contentions of the Commissioner that Congress itself in Subsection (a) (4) defined the term "indebtedness" as meaning "an indebtedness of the corporation existing at the close of business on December 31, 1937, and evidenced by a bond, note, debenture, certificate of indebtedness, mortgage or deed of trust, issued by the corporation and in existence on December 31, 1937, or by a bill of exchange accepted by the corporation prior to and in existence on such date" and that, therefore, the Treasury Department is not at liberty to add to or restrict the meaning of the term "indebtedness" as it has attempted to do by declaring in REGULATIONS 101, Article 27 (a)-3, that amounts which have been taken as a credit pursuant to Subsection (e) may not again be included in the dividends paid credit under Subsection (a) (4) when the obligations are paid. Said provision is an attempt to engraft a restriction on the clear meaning of

[1] The Commissioner argues that the allowance of a credit when the notes were issued in 1936 and again when they were paid in 1938 results in a duplicate or double credit. As pointed out in the dissenting opinion of Member Hill (App. p. 21) in **Spokane Dry Goods Company**, 43 B.T.A. 793, this is not so. The credits under the two Acts are applied differently and under radically different plans of taxation. Under the 1936 Act the taxpayer's credit was against income to the full extent but for surtax purposes only; in 1938 it was a credit against normal tax to the extent of 2½ per cent only (limited by a maximum of 2½ per cent of the income); in 1937 the credit was for dividends paid; in 1938 it was for indebtedness paid. How then can it be said that such credits are duplicates? If there is a duplication, how can the extent thereof be calculated?

But even if such Section 27(a)(4) results in allowing a duplicate credit, Congress granted it and there is no absolute prohibition against the allowance of a double deduction. Where Congress grants a double deduction the Courts are bound to sustain it. (See **Robert J. Kleberg**, 31 B.T.A. 95, and **Adams v. Commissioner**, 110 Fed. (2d) 578, where it was held that deductions for the same expense may be taken both in determining income tax and the net estate subject to tax, and also **Pacific Flush Tank Company v. Commissioner**, 45 B.T.A. 869, where after having been allowed a business expense deduction for a bonus paid in notes the taxpayer was held entitled to include the payment of the notes in his "dividends paid credit" as a payment on indebtedness.)

the term "indebtedness" as Congress has defined it and amounts to legislation rather than administrative regulation.

We further reply to the contentions of the Commissioner in this case just like the Board of Tax Appeals answered them in the PACIFIC FLUSH TANK COMPANY case, 45 B.T.A. No. 869, like the Court below answered identical contentions in this case, and like this Court answered substantially identical questions in the case of HELVERING v. CREDIT ALLIANCE CORPORATION, supra, and our further reply is this:— When a statute is plain and unambiguous a court will not resort to rules in aid of construction, but will give effect to the clear meaning of the statute. Subsection (a) (4) requires the inclusion in the "dividends paid credit" computation of amounts used or irrevocably set aside to pay or retire *indebtedness of any kind*. The language is plain and clear. There is no ambiguity or obscurity in it. It is susceptible of only one possible meaning. The purpose of the Congress has been expressed in language which anyone can understand. Therefore, under such circumstances, a court will not resort to rules of construction to give to such a statute a different meaning from that clearly expressed therein. The objections to the Commissioner's contention were succinctly stated by JUDGE HUTCHESON in the opinion below, as follows:

> "We think it clear that in attempting, by speculating as to what Congress intended to do except as that intent was expressed in the statute, to rationalize out of the section the comprehensive words which specifically grant the deduction, the Commissioner is attempting to have us arrogate to ourselves the function of rewording rather than of construing and applying the statute. The construction of a statute to make it carry out the intent its words import is one thing. The construction of it to bring it nearer to the thought of administrator or court, or of some particular section of public opinion, as to

what Congress intended or ought to have intended, or that the law would better serve its purpose if it were drawn that way, is quite another."

In 1938 the respondent paid $530,000.00 to retire "indebtedness" and it is mandatory under Subsection (a) (4) that such payment be included in respondent's "dividends paid credit" because the section covers all "indebtedness" except interest on obligations.

Replying specifically to the contention of the Commissioner that Subsection (e) of Section 27 is controlling over Subsection (a) (4) of Section 27 and hence bars the credit here claimed in 1938 for payment of indebtedness, we submit that in fact there is no relation between the provisions of Subsection (e) and Subsection (a) (4). This is shown by analysis of Subsection (e) and its application. Subsection (e) is comprised of two sentences. The first sentence provides the extent to which a dividend paid in obligations shall be used in computing the *basic surtax credit*. The basic surtax credit is defined by Subsection (b) and is included in the "dividends paid credit" by Subsection (a) (1) of Section 27. The second sentence of Subsection (e) provides the extent, if any, to which payments in the taxable year of dividend obligations issued after December 31, 1935, and before January 1, 1938, "shall be *treated as a dividend paid* in the taxable year when the redemption occurs." Dividends paid are includible in the "dividends paid credit" only through the basic surtax credit so this sentence also refers only to the basic surtax credit which, as pointed out above, is included in the "dividends paid credit" by Subsection (a) (1) and not by Subsection (a) (4). Nowhere in Subsection (e) is there any reference to what may or may not be included in the debts paid credit provided for by Subsection (a) (4). The basic surtax credit, of which the payment of dividends is a part, is one element of the "dividends paid credit" and is provided for by Sub-

section (a) (1). The debts paid credit is another element of the "dividends paid credit" and is provided for by Subsection (a) (4). Each of these elements would function as well and require no change in wording had the other not been enacted. They, therefore, are elements entirely independent of each other. Subsection (e), therefore, relates exclusively to Subsection (a) (1) through the definition supplied by Subsection (b) and does not control over or restrict what may be included in anything; but instead functions to broaden one element of the "dividends paid credit" namely, the "basic surtax credit," to include items which otherwise would not be includible in it. The fallacy of the Commissioner's position is in that he reads Subsection (e) as if it treats of the extent to which certain items are includible in the "dividends paid credit" instead of in the "basic surtax credit" as its language expressly states. We believe that the decision by the Board of Tax Appeals in this case and in SPOKANE DRY GOODS COMPANY, supra, as well as the decision of the Ninth Circuit in SPOKANE DRY GOODS COMPANY, supra, is occasioned by the fact that each of these courts failed properly to distinguish between "basic surtax credit" and "dividends paid credit." The court below recognized this distinction and necessarily held contrary to the other decisions.

If it be permissible to resort to rules of construction or delve into the cloudy realm of Congressional intent, we submit that since Subsection (a) (4) contains its own limitations, namely, the amounts paid must be reasonable with relation to the size and terms of the indebtedness and payments of interest on indebtedness are excluded, no other limitations or exceptions may be read into it as this Court is being asked to do. When Congress enacted Subsection (e) of the 1938 Act, it knew that there were many outstanding dividend obligations which would have to be paid because by Subsection (d) of Section 27 of the 1936 Act the Congress

had provided for the payment of dividends in corporate obligations and their inclusion in computing the "dividends paid credit" provided for by the 1936 Act. Had Congress intended that payments made in redemption of dividends obligations issued prior to 1938 should be excluded from Subsection (a) (4) as amounts used to pay indebtedness of any kind, it seems incredible that it would not have said so.

Moreover, the legislative history of Subsection (a) (4) shows that it was intended to apply to all kinds of indebtedness. The language was borrowed verbatim from Section 355 (b) of the REVENUE ACT OF 1937 (App. page 28). That subsection had its origin in Section 351 (b) (2) (B), Act of 1934, which provided for a credit in computing personal holding company tax of amounts due or set aside to retire indebtedness occurring prior to January 1, 1934, etc. When the Act of 1937 was being considered the Joint Committee on Tax Evasion and Avoidance recommended that said provision be eliminated entirely. (Report of Ways and Means Committee, 75th Congress, First Session, House Report 1546.) The Ways and Means Committee refused to follow this recommendation. The Senate not only agreed with the Ways and Means Committee that the provision should be retained, but broadened it by inserting the words "of any kind" between "indebtedness" and "incurred." (Section 355 (b), REVENUE ACT OF 1937.) The Finance Committee stated that a controversy had arisen as to the intent of the law and the amendment was made for the purpose of clarification. (Report of Senate Finance Committee, 75th Congress, First Session, Senate Report 1242.[2])

[2] The Committee recommends that Section 355(b) on page 9 of the Bill be amended as follows:

> "(b) Amounts used or irrevocably set aside to pay or retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness."

The respondent relies primarily on the statute itself in support of its position. Respondent also relies on the decision of the Board of Tax Appeals in PACIFIC FLUSH TANK COMPANY v. COMMISSIONER, 45 B.T.A. 869, and the decision of this Court in HELVERING v. CREDIT ALLIANCE CORPORATION, 316 U.S. 107, 62 S. Ct. 989. In the first mentioned case the taxpayer paid a bonus in 1937 in its 4 per cent notes, claimed the amount paid as a business expense deduction in its 1937 return and the Commissioner allowed the deduction. The notes were paid in 1938 and the taxpayer included the payment in computing its "dividends paid credit" for said year under Subsection (a) (4). The Commissioner disallowed the credit on the basis of Article 27 (a)-3 of REGULATION 101 which, as previously stated, provided that no credit may be allowed under Subsection (a) (4) for amounts used to pay or retire indebtedness which represents an item which is allowable as a deduction from gross income. The Commissioner argued that the Regulation was a reasonable interpretation of the statute in that the Regulation prevented a taxpayer from getting the benefit of a double credit or deduction for the same item. The Board of Tax Appeals held that the language of Subsection (a) (4) was plain and unambiguous and hence there was no occasion to apply rules in aid of construction. The Board accordingly held for the taxpayer. The Commissioner noted an appeal to the Circuit Court of Appeals for the Sixth Circuit from the decision of the Board in the PACIFIC FLUSH TANK COMPANY case, supra, but later the ap-

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The Committee agrees with the Ways and Means Committee of the House that the deduction (in arriving at the undistributed adjusted net income of a personal holding company) of amounts used or set aside to retire indebtedness incurred prior to January 1, 1934, should be retained in the bill. The insertion of the words "to pay" and "of any kind" are clarifying amendments to existing law. The word "irrevocably" is added to protect the revenue, so that amounts may not be set aside for retirement of debt, and deductions secured, although finally such amounts are never used to retire the indebtedness.

peal was dismissed on the Commissioner's own motion. (PRENTICE HALL, 1943, Par. 61085.) Said action on the part of the Commissioner may indicate that he agreed with the decision of the Board in said case. The Fifth Circuit Court of Appeals held in respondent's case that the Board by its decision in the PACIFIC FLUSH TANK COMPANY case, supra, reversed its earlier decision in the SPOKANE DRY GOODS COMPANY case, supra. It is true that the Board did attempt to distinguish the PACIFIC FLUSH TANK COMPANY case from the SPOKANE DRY GOODS COMPANY case, but in reality there is no material difference between the two cases. The deduction of the bonus paid in notes on the one hand and the credit for the dividend paid in obligations on the other, each resulted in diminishing the surtax on undistributed profits.

In HELVERING v. CREDIT ALLIANCE CORPORATION, supra, the question was whether the taxpayer was entitled to a "dividends paid credit" under Subsection (f) of Section 27 of the REVENUE ACT OF 1936. Since the dividend was not taxable to the recipient, the Commissioner contended that it was not allowable as a credit in view of Subsection (h) of Section 27 and he relied on TREASURY REGULATION 94, Article 27 (f). This Court held that the Regulation was invalid and that Subsection (f) must be given effect even though the distribution was not taxable in the hands of the recipient. MR. JUSTICE ROBERTS, who wrote the opinion, said:

> "We should, of course, read the two sections as consistent rather than conflicting, if that be possible. Here it is not only possible but begets no absurd or impractical results."
>
> "But whatever may be said of the policy behind the statute's provisions, we are not at liberty to disregard the direct and unambiguous language of Subsection (f)."
>
> "In view of what we have said as to the plain meaning of Subsection (f), we think that no complexity or confusion is discoverable, and that the regulation not only

was contradictory of the plain terms of the subsection, but attempted to add a supplementary legislative provision, which could only have been enacted by Congress."

In respondent's case an analogous situation exists. The credit claimed by respondent is allowable under the unambiguous language of Subsection (a) (4). The REGULATION (Article 27(a)-3, Reg. 101) on which the Commissioner relies to deny the respondent the "debt credit" contravenes the plain terms of Subsection (a) (4) and attempts to limit the effect of that subsection beyond any limitation which Congress itself saw fit to impose when the subsection was enacted, and it may fairly be said here too that the Regulation in question is an attempt to add a supplementary legislative provision which could only have been enacted by Congress.

Conclusion

The decision of the Fifth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX

Opinion Court Below

Before Sibley, Hutcheson and Holmes, Circuit Judges

Hutcheson, Circuit Judge: Submitted upon stipulation as to the facts,[1] the Board, following its decision in Spokane Dry Goods Co. v. Commissioner,[2] sustained the determination of the Commissioner that in computing its income tax for the taxable year 1938, the taxpayer was not entitled under 27(a)(4),[3] to take a dividends paid credit for the $530,-

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[1] In 1937, taxpayer, a Delaware Corporation having two stockholders, Pure Oil Corporation and Sabine Towing Company, Inc., declared and paid on its outstanding common stock, cash dividends of $30,000, and a further dividend of $530,000.00 by the issuance and delivery of its 10 year 8% notes. In its Federal income and excess profits tax return for 1937 the petitioner reported the cash dividends and the dividends paid in its obligations, and they were allowed as dividends paid credits.* During the tax year, 1938, the year involved in this proceeding, the 10-year dividend notes were paid to its stockholders in cash and in its return for 1938, taxpayer reported these distributions to stockholders and claimed a dividends paid credit, under Sec. 27(a)(4), Revenue Act of 1938, on account of the sums used to pay and retire them. Respondent disallowed the claim and taxpayer brought the matter to the Board.

* Section 27 of Revenue Act of 1936:

Sec. 27. Corporation Credit for Dividends Paid.

(a) Dividends Paid Credit in General.—For the purposes of this title, the dividends paid credit shall be the amount of dividends paid during the taxable year. * * *

(d) Dividends in Obligations of the Corporation.—If a dividend is paid in obligations of the corporation, the amount of the dividends paid credit with respect thereto shall be the face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. * * *

[2] 43 B. T. A. 793, affd., 125 F. (2d) 865.

[3] Sec. 27. Corporation Dividends Paid Credit:

"(a) Definition in General. As used in this title with respect to any taxable year the term 'dividends paid credit' means the sum of: (1) * * * (2) * * * (3) * * * and (4) 'Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness.' As used in this paragraph the term 'Indebtedness' means only an indebtedness of the cor-

000 used to pay or retire the notes issued in 1937 as dividends paid on its obligation.

Taxpayer is here insisting, that by the plain mandate of the section it is entitled to the credit claimed and that both this and the Spokane case were wrongly decided. The Commissioner, standing on the Spokane case and on the regulation that case approved, insists that the order of the Board was right and must be affirmed. We do not think so. We think it clear that the Spokane case was wrongly decided by Board and court; that the dissenting opinion of Board member Hill, clearly and correctly stated the law of that case; and that in the Pacific Flush Tank case,[4] the Board while in terms differentiating, in effect overruled its prior decision. We agree with what it there said. "The terms of the statute as applicable to the facts of this case, are so plain and unambiguous as to require in our opinion no resort to construction in order to ascertain its meaning. However, if it could be said that the application of the literal meaning of the statute leads to results which should be avoided, that is, the granting of a double tax benefit, and that this statute should be construed in the light of the purpose and intent of Congress in enacting same, we nevertheless * * * conclude that even if the allowance of the credit claimed here would result in duplicating in whole or in part a tax benefit to the petitioner, it nevertheless appears clear that Congress intended to and did expressly grant such credit. And we further conclude that Art. 27 (a) (3) of Regulations 101, purporting to deny

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poration existing at the close of business on December 31, 1937, and evidenced by a bond, note, debenture, certificate of indebtedness, mortgage, or deed of trust, issued by the corporation and in existence at the close of business on December 31, 1937, or by a bill of exchange accepted by the corporation prior to and in existence at the close of business on such date. Where the indebtedness is for a principal sum, with interest no credit shall be allowed under this paragraph for amounts used or set aside to pay such interest."

[4] Pacific Flush Tank Co. v. Commissioner, 45 B.T.A. 69.

such credit is contrary to the statute and is therefore a nullity as applied to the facts of this case."

We think it clear that in attempting, by speculating as to what Congress intended to do except as that intent was expressed in the statute, to rationalize out of the section the comprehensive words which specifically grant the deduction, the Commissioner is attempting to have us arrogate to ourselves the function of rewording rather than of construing and applying the statute.[5] The construction of a statute to make it carry out the intent its words import is one thing. The construction of it to bring it nearer to the thought of administrator or court, or of some particular section of public opinion, as to what Congress intended or ought to have intended, or that the law would better serve its purpose if it were drawn that way,[6] is quite another. However, we need

[5] "Courts and Administrative agencies are bound to enforce the plain words of the statute although there may be reason to think in view of the general legislative purpose that some other provision would have met with favor, if the legislature had called it to mind." Commissioner of Internal Revenue v. Windrow, 89 F. (2d) 69, 110 A.L.R. 1251.

[6] "A legislative act in the United States is not as in some countries, a mere general outline by a party or group in power, of the purposes it wishes to accomplish, to be expanded, implemented and given effect by its administrators in accordance with the general purposes of its proponents. A fundamental fact in American political life has always been that in the struggle here for laws as means, to make law as liberator effective, there have always been differing opinions, as to the wisdom, propriety and scope of proposed new and controversial laws. Laws as finally enacted here, are usually the result of a compromise, or at least of an adjustment of these conflicting views.

"Because this is and always has been so, it can be usually said of our laws, that the general, not the partial or partisan will, speaks in them. It is because this is so, that canons of statutory interpretation and construction require that statutes must be construed and given effect, in accordance with the language chosen for the expression, of this compromise and adjustment of views, and not in accordance with the purposes or views, of either the proponents or the opponents of the legislation; which have not been given expression in the statute." Fleming v. Belo, 121 F. (2d) at 212-13, affd. June 9, 1942, —U.S.—.

not further labor the point here, for in Helvering v. Credit Allowance Association, April 27, 1942, —U.S.—, the Supreme Court, rejecting the same kind of reasoning as to a dividends paid credit claimed under Section 27(b) of the Revenue Act of 1936, and declaring invalid a regulation which contravened the plain terms of the statute, has set the matter at rest. Definitely reaffirming the principle that it is for the courts not to write but to enforce a statute, the court said: "But we cannot, as the Government suggests, read into the section, as it stood when the transaction took place, an intent derived from the policy disclosed by the subsequent amendment. We shall not burden this opinion by extended reference to the legislative history of the Act of 1936. It is enough to say that it is inconclusive and, to some extent, supports the arguments of both parties. But whatever may be said of the policy behind the statute's provisions, we are not at liberty to disregard the direct and unambiguous language of Subsection (f)." The principle there announced has controlling force here. Congress, for reasons of its own, in working out a compromise or adjustment, of the very controversial questions raised by the policy of, in effect, taxing corporations on dividends unpaid and of allowing them credits on those paid or what was regarded as the equivalent, drew the dividends paid statutes in the terms in which we find them. The taxpayer, conforming to the statute, paid dividends in its obligations in 1937. Still conforming to the statute it paid these obligations in 1938 and claimed the dividends credit the statute allowed, for the payment or retirement of "indebtedness of any kind." It is not for the Commissioner or the courts to deny the taxpayer the deduction that Congress has granted him. The order is reversed and the cause is remanded for further and not inconsistent proceedings.

Reversed and remanded.

Dissenting Opinion—Spokane Dry Goods Company Case.

HILL, dissenting: I do not agree with the conclusion in the opinion of the majority. Two premises are assumed in support of such conclusion. They are (1) that Section 27 (e) of the Revenue Act of 1938 specifically prescribes what dividends paid credits are allowable in respect of dividends paid in a corporation's obligations and that thereby the dividends paid credit provided by Section 27 (a) (4) of such act is excluded if the indebtedness involved represents a dividend obligation; and (2) that it should not be presumed that Congress intended to grant a double deduction for the same transaction in the absence of unmistakable and definite language evidencing such intent.

It is my conviction that the first premise is wrong. The second premise is sound in the abstract but, in my opinion, the situation here does not invoke its application.

I see nothing in the language or the subject treated in Section 27 (e) to indicate that the prevention of duplication of dividends paid credit was involved in the purposes of such enactment. It seems clear to me that the objectives of such enactment are merely to provide when and in what amounts dividends paid credits shall be allowed for dividends paid, such dividends being paid in the corporation's obligations (1) when such dividends are so paid and, (2) when the dividend obligations are redeemed, if the amount for which they are redeemed exceeds their fair market value at the time of the dividend payment. The scope of the provisions of Section 27 (e) is confined to the one purpose of assuring to the taxpayer credit or credits for dividends paid to the extent of the amount for which the obligations are redeemed. The specific and plain language used to express this limited purpose leaves no doubt of its meaning. Neither Section 27 (e), *supra*, nor 27 (d) of the Revenue Act of 1936 relates to dividends paid

credit provided by Section 27(a) (4), *supra*, on account of money used or irrevocably set aside to pay or retire indebtedness. Neither Section 27(e) nor Section 27(d) purports to exclude the application of the provisions of Section 27(a) (4) where the indebtedness involved represents a dividend obligation. Neither of such sections touches the subject of duplicate credits, either specifically or by implication. The Revenue Act of 1936 has no provisions comparable to those of Section 27(a) (4) and consequently Section 27(d) thereof was enacted without reference to such provisions. Section 27(e), *supra*, is in essence merely a reenactment of such Section 27(d). Section 26(c) (1) and (2) of the Revenue Act of 1936 provides credits to corporations for purposes of surtax in the case of contracts restricting payment of dividends and contracts requiring earnings and profits to be paid or irrevocably set aside within the taxable year for the discharge of a debt. Section 26(c) (3) of that act prohibited the allowance of double credits in respect of such contracts. The provisions of such Section 26(c) (1), (2), and (3) were not carried forward to or reenacted in the Revenue Act of 1938 and no provisions comparable thereto appear in the latter act.

The provisions of Section 27(a) (4) first appeared in the 1938 Act. Its language is all-embrasive and unambiguous in providing dividends paid credit for payment of indebtedness as therein defined. By its terms it applies to such "indebtedness of any kind." There is no exception. Section 27(a) (4), on the one hand, and Section 27(e) and Section 27(d), *supra*, on the other, treat of and specifically provide for different, noninterdependent, and nonexclusive sources of dividends paid credit. There is nothing in the language of either of such sections or elsewhere in the Revenue Act of 1938 to indicate that if a dividends paid credit is taken for dividends paid in the corporation's obligations a dividends

paid credit may not also be taken as provided by Section 27(a)(4) when such obligations are paid, provided such obligations constitute indebtedness as defined in Section 27(a)(4). The obligations paid in 1938 by petitioner for which it claims a dividends paid credit in this proceeding constitute such indebtedness.

The credit in question is affirmatively authorized by unambiguous provisions of statute. The lack of ambiguity in the statute forecloses the privilege, assumed in the opinion of the majority, to construe it.

"It is elementary that the province of construction lies in the domain of ambiguity, and that the use by a legislative body of words having definite meanings creates no ambiguity, and that such words are to be taken and understood in their plain, ordinary and popular sense." Helvering v. Nebraska Bridge Supply & Lumber Co., 115 Fed. (2d) 288 (40-2 U.S.T.C. Par. 9794).

Furthermore, it is doubtful whether the charge of duplicate credit can be sustained in respect of the credit here in question. The credit in 1936 for dividends paid in petitioner's obligations was applied against income not for the purpose of normal tax, but for the purpose of surtax on undistributed profits under Section 14 of the Revenue Act of 1936. There was no such credit in respect of normal tax. The Revenue Act of 1938 has no provision for tax corresponding to the tax imposed by Section 14 of the 1936 Act. The credit in question here applies only to the tax provided by Section 13 of the Revenue Act of 1938. It does not apply to any other tax-levying provision. The charge of duplicate credit must, therefore, apply only in respect of the tax levied under Section 13 of that act. That section does not levy a surtax but levies a tax of 19 per cent on the adjusted net income of corporations generally. If a corporation has received dividends in the taxable year from domestic corporations it gets a credit

against tax of 16½ per cent of 85 per cent of such dividends. If it has a dividends paid credit consisting of one or more of the items constituting such credit as provided in Section 27, it gets a credit against tax of 2½ per cent of such dividends paid credit.

A comparison of the Revenue Acts of 1936 and 1938 discloses that not only are the credits allowed corporations under Sections 26 and 27 of the 1936 Act widely variant in scope and kind from credits provided in Sections 26 and 27 of the 1938 Act, but they are applied differently and under radically different schemes or plans of taxation.

The Revenue Act of 1936 levied both a normal and a surtax on corporations generally. The rate of the normal tax levied was graduated through four brackets from 8 per cent to 15 per cent on the normal tax net income. The rate of the surtax levy was graduated through five brackets from 7 per cent to 27 per cent on the undistributed net income. The credit which petitioner received for dividends paid in 1936 was a deduction from income for the computation of surtax only. It had no application to the normal tax levied. The credit that petitioner claims in this proceeding would, if allowed, be applied not as a deduction from income or in respect of a tax levied on undistributed profits, but to the extent of 2½ per cent thereof as a credit against a tax on the adjusted net income of corporations generally, regardless of whether any of such income was undistributed.

The two credits—the one received in 1936 and the one now claimed—were not credits against the same thing. One was against income, the other against tax. They were not the same kind of credits. One was for dividends paid and the other for indebtedness paid. They were not credits in respect of the same kind of tax or under the same or a comparable scheme of taxation. One credit was applied to the extent of its full amount, the other to the extent of only 2½ per cent of its amount. The credit in 1936 may have eliminated a surtax

entirely or it may have reduced the rate of surtax from 27 per cent to 7 per cent or to some intermedite rate, while the credit claimed in this proceeding would reduce a normal tax levy by the amount of 2½ per cent of such credit.

An attempt to detail all of the variances between the two credits which would be revealed in their application under the respective revenue acts would present a problem in permutations.

Who, then, can say that the credit claimed by petitioner in this proceeding duplicates the dividends paid credit received in 1936? If there is a duplication, how can the extent of it be calculated?

However, whether or not the allowance of the credit claimed here by petitioner would result in duplicating a credit which it took for the year 1936, it appears to me clear that the Congress intended to and did expressly grant such credit as is here claimed. The language providing such credit is unambiguous and, without reading something into the statute as it stands or imputing to it a more restricted meaning than its language warrants, I think it must be concluded that petitioner's claim of credit is authorized and should be allowed. Black and Harron agree with this dissent.

Section 13 of Revenue Act of 1938:

SEC. 13. TAX ON CORPORATIONS IN GENERAL.

(a) Adjusted Net Income—For the purposes of this title the term "adjusted net income" means the net income minus the credit provided in Section 26(a), relating to interest on certain obligations of the United States and Government corporations.

(b) Imposition of Tax.—There shall be levied, collected, and paid for each taxable year upon the net income of every corporation the net income of which is more than $25,000

(except a corporation subject to the tax imposed by Section 14, Section 231(a), Supplement G, or Supplement Q) a tax computed under Subsection (c) of this section or a tax computed under Subsection (d) of this section, whichever tax is the lesser.

(c) General Rule—The tax computed under this Subsection shall be as follows:

(1) A tentative tax shall first be computed equal to 19 per centum of the adjusted net income.

(2) The tax shall be the tentative tax reduced by the sum of—

(A) 16½ per centum of the credit for dividends received provided in Section 26(b); and

(B) 2½ per centum of the dividends paid credit provided in Section 27, but not to exceed 2½ per centum of the adjusted net income.

Section 27(a), (b) and (e), Revenue Act of 1938:

SEC. 27. CORPORATION DIVIDENDS PAID CREDIT:

(a) *Definition in General.* As used in this title with respect to any taxable year the term "dividends paid credit" means the sum of:

(1) The basic surtax credit for such year, computed as provided in Subsection (b);

(2) The dividend carryover to such year, computed as provided in Subsection (c);

(3) The amount, if any, by which any deficit in the accumulated earnings and profits, as of the close of the preceding taxable year (whether beginning on, before, or after January 1, 1938), exceeds the amount of the credit provided in Section 26(c) (relating to net operating losses), for such preceding taxable year (if beginning after December 31, 1937); and

(4) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness. As used in this paragraph the term "indebtedness" means only an indebtedness of the corporation existing at the close of business on December 31, 1937, and evidenced by a bond, note, debenture, certificate of indebtedness, mortgage, or deed of trust, issued by the corporation and in existence at the close of business on December 31, 1937, or by a bill of exchange accepted by the corporation prior to, and in existence at, the close of business on such date. Where the indebtedness is for a principal sum, with interest, no credit shall be allowed under this paragraph for amounts used or set aside to pay such interest.

(b) *Basic Surtax Credit.* As used in this title the term "basic surtax credit" means the sum of:

(1) The dividends paid during the taxable year, increased by the consent dividends credit provided in Section 28, and reduced by the amount of the credit provided in Section 26(a), relating to interest on certain obligations of the United States and Government corporations;

(2) In the case of a taxable year beginning after December 31, 1938, the net operating loss credit provided in Section 26(c)(1);

(3) The bank affiliate credit provided in Section 26(d).

The aggregate of the amounts under Paragraphs (2) and (3) shall not exceed the adjusted net income for the taxable year.

(e) *Dividends in Obligations of the Corporation.* If a dividend is paid in obligations of the corporation, the amount with respect thereto which shall be used in computing the basic surtax credit shall be the face value of the obligations,

or their fair market value at the time of the payment, whichever is the lower. If the fair market value of any such dividend paid in any taxable year of the corporation beginning after December 31, 1935, is lower than the face value, then when the obligation is redeemed by the corporation in a taxable year of the corporation beginning after December 31, 1937, the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall be treated as a dividend paid in the taxable year in which the redemption occurs.

Section 355 of Revenue Act of 1937:

SEC. 355. UNDISTRIBUTED ADJUSTED NET INCOME.

"For the purposes of this title the term 'undistributed adjusted net income' means the adjusted net income (as defined in Section 356) minus—

* * *

"(b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness."

Section 27(a), (d), (f) and (h) of Revenue Act of 1936:

SEC. 27. CORPORATION CREDIT FOR DIVIDENDS PAID.

(a) Dividends Paid Credit in General.—For the purposes of this title, the dividends paid credit shall be the amount of dividends paid during the taxable year.

(d) Dividends in Obligations of the Corporation.—If a dividend is paid in obligations of the corporation, the amount of the dividends paid credit with respect thereto shall be the

face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. If the fair market value is lower than the face value, then when the obligation is redeemed by the corporation, the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall be treated as a dividend paid in the taxable year in which the redemption occurs.

(f) Distribution in Liquidation.—In the case of amounts distributed in liquidation the part of such distribution which is properly chargeable to the earnings or profits accumulated after February 28, 1913, shall, for the purposes of computing the dividends paid credit under this section, be treated as a taxable dividend paid.

(h) Nontaxable Distribution.—If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this title for the period in which the distribution is made, no dividends paid credit shall be allowed with respect to such part.

Section 351 (b) (2) of Revenue Act of 1934:

"(2) The Term 'undistributed adjusted net income' means the adjusted net income minus the sum of:

* * *

(B) Amounts used or set aside to retire indebtedness incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness;"

* * *

Article 27(a)-3. Regulations 101:

ART. 27(a)-3. AMOUNTS USED OR IRREVOCABLY SET ASIDE TO PAY OR TO RETIRE INDEBTEDNESS. (a) INDEBTEDNESS.—

Double credits are not permitted, either for the same year or for separate years. Thus, amounts which have been or may be properly taken as a credit pursuant to Section 27(e) of the Act or Section 27(d) of the Revenue Act of 1936 (both sections relating to dividends in obligations of the corporation) may not again be included in the dividends paid credit under Section 27(a)(4) when the obligations are paid. No credit may be allowed under Section 27(a)(4) for amounts used or irrevocably set aside to pay or retire indebtedness which represents an item which is allowable as a deduction from gross income, either for the same year or a different year. Thus the aggregate of the credits allowable under Section 27(a)(4) for amounts used or irrevocably set aside to pay or to retire obligations issued at a discount may not exceed the issue price of such obligations.

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SUPREME COURT OF THE UNITED STATES.

No. 518.—October Term, 1942.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, *vs.* Sabine Transportation Company, Inc. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 1, 1943.]

Mr. Justice Roberts delivered the opinion of the Court.

In this case the Circuit Court of Appeals held the respondent entitled to include in its dividends paid credit, pursuant to Section 27[1] of the Revenue Act of 1938, the amount paid to redeem notes given for dividends in a prior year.[2] The Circuit Court of Appeals of the Ninth Circuit had held to the contrary.[3] To resolve the conflict we granted certiorari.

In 1937 the respondent paid dividends, $30,000 in cash and $530,000 in its ten year eight per cent notes. As respects its liability for undistributed profits tax, it claimed and was allowed, pursuant to § 27(d) of the Revenue Act of 1936,[4] as part of its "dividends paid credit", the face value of the notes. In 1938 the respondent paid off the notes, and in its return for that year claimed the sum paid as a part of its "dividends paid credit" under the Revenue Act of 1938, § 27(a)(4).[5] The Commissioner's disallowance of the claim was sustained by the Board of Tax Appeals, but the Circuit Court of Appeals reversed the Board's decision.

The position of the petitioner is that the second credit claimed would duplicate the earlier one allowed and that § 27 of the Revenue Act of 1938 does not permit the duplication.

The Revenue Act of 1936, by § 13, imposed on corporations a tax ranging from eight to fifteen per cent of the so-called "normal-tax net income", consisting of net income less certain permitted

[1] Act of May 28, 1938, c. 289, 52 Stat. 447, 468.
[2] 128 F. 2d 945.
[3] Spokane Dry Goods Co. v. Commissioner, 125 F. 2d 865.
[4] 49 Stat. 1645, 1665.
[5] 52 Stat. 468.

deductions. It then laid a graduated surtax on "undistributed net income" which it defined as the adjusted net income (the normal-tax net income after credits) less the so-called "dividends paid credit". By § 27 the Act defined the latter as comprising dividends paid during the taxable year including [27(d)] dividends in obligations of the company to be reckoned at face value or market value, whichever was lower. The subsection also provided that, if such obligations were redeemed in any subsequent year, the excess of the redemption payment over the fair market value of the obligations as of the date of their issue should be treated as a dividend paid in the year of redemption.

The purpose of these provisions is clear and is a matter of common knowledge. Congress desired to encourage the payment of dividends so that the earnings of corporations might be subjected not only to normal tax as against the corporation, but also to taxation as income to the stockholders.[6] The means adopted was to relieve the corporation from surtax to the extent of dividends paid in cash or in obligations. The latter would be taxed to stockholders at their market value. If they were redeemed at a later year, at a figure above such value as of the date of their issue, the excess would be taxed to the holder as income to him in the year of redemption. Fairness dictated that in such case the corporation should have a further dividends paid credit for this excess of value paid by it.

The Revenue Act of 1938 adopted a different plan of corporate taxation. With respect to a corporation having the amount of income earned by the respondent, § 13 imposed a tentative tax of 19% of "adjusted net income", which was the entire net income less certain deductions not here material. This tentative tax was to be reduced by the sum of two deductions. One of these is not in issue here. The other is 2½% of the "dividends paid credit", not however to exceed 2½% of the adjusted net income. The dividends paid credit is defined by § 27. It consists of four items, two of which are carry-overs from previous years, which need not concern us; and two others which are important in this case,—first, the "basic surtax credit", § (a)(1), and, secondly, "amounts

[6] It appears that respondent's sole stockholders are two corporations, but we do not understand petitioner to contend that this circumstance affects the operation or application of Section 27. It is assumed that these two corporations are bona fide stockholders of respondent and paid tax on the dividends they received. The section in terms applies to every corporate taxpayer whether it has but two stockholders which are corporations or two thousand who are natural persons.

used . . . to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness," (a)(4).[7] Indebtedness is defined as indebtedness existing at the close of business December 31, 1937, and evidenced by bond, note, debenture, certificate of indebtedness, mortgage or deed of trust issued by the corporation and in existence at the close of business December 31, 1937, or a bill of exchange accepted prior to and in existence at that time. The term is further defined as covering principal only and not interest thereon.

The basic surtax credit is the sum of several items, including cash dividends paid and certain other specified credits. Dividends in kind are to be valued and treated as cash dividends. Subsection (e) provides that, in computing the basic surtax credit, a dividend paid in obligations of the corporation shall be treated as a cash dividend in the amount of the face value of the obligations or their market value, whichever is lower, and that, if the obligations are redeemed in a subsequent year, any excess paid the holders over the market value at date of issue shall be treated as a dividend paid in that year. This provision, it will be noted, is similar to § 27(d) of the Revenue Act of 1936. But the credit of which it forms a part differs from that of the earlier Act as it is against the tax and not against income and is limited to 2½% of adjusted income. The use of the credit, may, therefore, produce results materially different from the use of the credit granted by the 1936 Act.

The petitioner asserts that Congress did not intend the taxpayer to have two credits as a result of payment of a dividend in its own obligations, that exemptions or credits should be strictly construed as against the taxpayer, and that the regulations promulgated under the Revenue Act of 1938 clearly deny the deduction claimed in this case.

On the face of the 1938 Act the items which go toward making up the basic surtax credit under § 27(b) are distinct from the credit for indebtedness paid under § 27(a)(4). Although the note obligations paid by the respondent were issued in payment of dividends for a prior year they, nevertheless, fall within the precise terms of § 27(a)(4). In this connection § 27(e) might have application if the redemption of the notes had been at a figure less than their face or market value at the time they were

[7] No question is made in this case as to the reasonableness of the amount paid.

greater

issued to the stockholders for, in that case § 27(e) would have permitted the respondent to take a credit for the excess of the redemption price over the value at date of issue as a dividend paid in the current year. But we think that § 27(e) does not otherwise bear on a payment such as that in question and does not qualify the plain intent of § 27(a)(4).

The Congress had in the 1936 Act encouraged the payment of dividends in obligations. It knew that many corporations had done so. With this knowledge it adopted the sweeping language of § 27(a)(4) of the Act of 1938. As introduced the section spoke only of indebtedness. It was amended by the Senate Finance Committee by adding the words "of any kind" after the word "indebtedness", for the purpose of clarification.[8] These facts, without more, make plain the scope of the provision, and answer the contentions that no credit was intended to be granted for the payment in the taxable year of obligations issued for dividends in a prior year. If more were needed, it should be noted that had the corporation borrowed money in a prior year to pay a dividend, the payment of the debt in a later year would clearly have entitled it to credit for the payment under § 27(a)(4). There is no reason for assuming that Congress intended to treat the two cases differently, and it has, in plain terms, granted a credit in both.

What has been said respecting § 27(e) indicates that it does not limit or qualify § 27(a)(4). It may supplement it in a case where the payment of the obligations issued for dividends is in excess of the market value of those obligations when they were issued. The argument that it is a specific provision, qualifying an earlier general provision of § 27, must be rejected.

It remains to consider the Treasury Regulations promulgated under the 1938 Act.[9] These forbid a credit such as that claimed in this case, calling it a "double credit". We think the regulations are in the teeth of the unambiguous mandate of the statute, are contradictory of its plain terms, and amount to an attempt to legislate. They cannot prevail to preclude the credit claimed.[10] The judgment is affirmed.

MR. JUSTICE RUTLEDGE took no part in the consideration or decision of this case.

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[8] Senate Finance Committee Report, S. R. 1242, 75th Cong., 1st Sess.

[9] Regulations 101, Art. 27(a)-3.

[10] Helvering v. Credit Alliance Corporation, 316 U. S. 107.

Mr. Justice BLACK, with whom Mr. Justice DOUGLAS and Mr. Justice MURPHY concur, dissenting.

The taxpayer, Sabine Transportation Co., Inc., is a Delaware corporation doing business in Texas. Its stock is held in equal amounts by two other corporations, Sabine Towing Co., Inc., and The Pure Oil Corporation. In 1937, a dividend of $530,000.00 was declared, amounting to $35.33⅓ per share on the common stock. The dividend was paid to the two corporate owners by execution of ten year, eight per cent notes. The taxpayer then claimed and was allowed a "dividend paid credit" under the 1936 Act on its 1937 tax. In 1938 the taxpayer paid to its two corporate stockholders the full face value of the ten year notes. It is now given a second "dividends paid credit" under the 1938 Act on its 1938 tax.

This $530,000.00 has left the corporate treasury only once. Bookkeeping devices and paper contrivances should not be permitted to make two payments out of one; and if two deductions are permitted, why not three or more? The possibilities of manipulation of notes, bonds, stocks, and every other cash substitute imaginable, are particularly apparent when, as here, the taxpayer and its stockholders are so closely interrelated. Congress has passed no tax statutes which compel me to conclude that it intended to reward ingenuity in paper work by granting multiple tax deductions for a single money payment to discharge a single corporate obligation.